1 2 3 Cashier Section Superior Court Clerk 4 5 6 STATE OF WASHINGTON 7 KING COUNTY SUPERIOR COURT 8 IN RE: FRANCHISE NO POACHING PROVISIONS : 9 WESTSIDE PIZZA INTERNATIONAL, INC. 10 (WESTSIDE PIZZA ASSURANCE OF **INTERNATIONAL**, INC.) DISCONTINUANCE 11 12 13 The State of Washington (State), by and through its attorneys, Robert W. Ferguson, Attorney General, and Rahul Rao, Assistant Attorney General, files this Assurance of 14 15 Discontinuance (AOD) pursuant RCW 19.86.100. 16 T. **PARTIES** 17 In January 2018, the Attorney General initiated an investigation into Westside 1.1 Pizza International, Inc. ("Westside") relating to its hiring practices. 18 19 1.2 Westside is a Washington corporation with its principal office or place of 20 business in Westside. Westside is in the business of owning, operating and franchising the 21 opportunity to own and operate pizza restaurants. 22 1.3 For the purposes of this AOD, Westside includes its directors, officers, 23 managers, agents acting within the scope of their agency, and employees as well as its 24 successor and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and

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joint ventures.

## II. INVESTIGATION

- 2.1 Westside has 21 stores in Washington. Twenty of these stores are owned and operated by franchisees and one is owned and operated by Westside.
- 2.2 For years, Westside has included language in its franchise agreements that restricted a franchisee's ability to solicit or hire workers from another Westside ("no-poaching provision"). Specifically, the standard Westside franchise agreement stated that a franchisee:

Employees: Neither Franchisee nor its owners, managers, employees or agents may, during the term of this Agreement, during any renewal, successor or extended term, or for two years thereafter, directly or indirectly employ any person who is employed by WPI, by any entity controlled by WPI or by any other of its franchisees, nor may Franchisee or its owners induce or attempt to induce any of these people to leave their employment without WPI's prior written consent and the consent of their employers. WPI will not induce or attempt to induce Franchisee's employees to leave their employment with Franchisee and become employed by WPI or its subsidiaries or affiliates without Franchisee's consent, while Franchisee is in compliance with this Agreement.

A no-poaching provision restricted franchisees from hiring both employees from a competing franchisee and from Westside's corporate-owned stores.

- 2.3 The Attorney General asserts that the foregoing conduct constitutes a contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act, RCW 19.86.030.
- 2.4 Westside expressly denies the conduct described above constitutes a contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act, RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade. Westside enters into this AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of Westside.

- 3.1.1. It will no longer include no-poach provisions in any of its future
- 3.1.2. It will no longer enforce no-poaching provisions in any of its existing franchise agreements, and will not seek to intervene or defend in any way the legality of any no-poach provision in any litigation in which a franchisee may claim third-party beneficiary
- 3.1.3. It will notify all of its franchisees of the entry of this AOD and provide
- 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a franchisee in Washington to enforce any existing no-poach provision.
- Within 60 days of entry of this AOD, Westside will have amended, or made good faith effort to have amended by sending an amendment signed by Westside, all existing franchise agreements with entities in Washington to remove any no-poaching provisions in its existing franchise agreements. If any franchise owner is unwilling to consent to the change to its franchise agreement, prior to the 60-day deadline, Westside shall provide the name and address of the resisting franchisee and the name and address of the franchisee's registered
- As they come up for either renewal or renegotiation during the ordinary course of business, Westside will amend all of its existing franchise agreements on a nationwide basis to remove any no-poach provision.
- 3.4 Within 30 days of the conclusion of the time periods referenced in this section III, Westside will submit a declaration to the Attorney General's Office signed under penalty of perjury stating that all provisions of this agreement have been satisfied.

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## IV. ADDITIONAL PROVISIONS

- 4.1 This AOD is binding on, and applies to Westside, including each of its respective directors, officers, managers, agents acting within the scope of their agency, and employees, as well as their respective successors and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, or other entities through which Westside may now or hereafter act with respect to the conduct alleged in this AOD.
- 4.2 This is a voluntary agreement and it shall not be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of Westside. By entering into this AOD, Westside neither agrees nor concedes that the claims, allegations and/or causes of action which have or could have been asserted by the Attorney General have merit and Westside expressly denies any such claims, allegations, and/or causes of action. However, proof of failure to comply with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon the violator the burden of defending against imposition by the Court of injunctions, restitution, costs and reasonable attorney's fees, and civil penalties of up to \$2,000.00 per violation.
- 4.3 Westside will not, nor will it authorize any of its officers, employees, representatives, or agents to state or otherwise contend that the State of Washington or the Attorney General has approved of, or has otherwise sanctioned, the conduct described in paragraph 2.2 with respect to the No-Poach Provision in Westside's franchise agreement.
- 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust Division of the Attorney General's Office under the Consumer Protection Act and any other related statutes pertaining to the acts set forth in paragraphs 2.1 2.3 above that may have occurred before the date of entry of this AOD and concludes the investigation thereof. Subject to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's Office shall not file suit or take any further investigative or enforcement action with respect to the acts set forth above that occurred before the date of entry of this AOD.

APPROVED ON this day of, 2019.
JUDGE/COURT COMISSIONER
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